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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

"Comfort women": a case of impunity

1. This statement approaches the question of impunity treated in the report which Mr. Joinet and Mr. Guissé submitted to the Sub-Commission in 1993 (E/CN.4/Sub.2/1993/6) in relation to the so-called "comfort women" or sexual slaves for the military, recruited by the Japanese Imperial Forces during the Second World War. The International Fellowship of Reconciliation requests the Commission to encourage Mr. Guissé and Mr. Joinet, as well as the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to take into consideration the following information and recommendations for further study.

2. In a statement to the Sub-Commission in August 1993, Japan acknowledged the wartime enslavement of the "comfort women" by the Japanese Imperial Forces and Government. Japan acknowledged that the Asian, mainly Korean, women were recruited directly by the Japanese Imperial Forces or those who were instructed by them; that the methods of the recruitment of the women were coercive or deceptive in general; that they were transported or deported by the Japanese Imperial Forces, which used various methods including deportation in Japanese ships; that the victims were taken to so-called "comfort houses" which were established by the Japanese Imperial Forces and that the victims were forced into sexual slavery by the Japanese Imperial Forces.

Legal analysis: customary international law

3. The facts admitted by Japan mentioned above fall within the meaning of "enslavement", "deportation", "inhumane acts" and "persecution on political or racial grounds", which are the elements of crimes against humanity. As a result, IFOR has no hesitation in joining the NGOs which in United Nations human rights meetings have defined the actions of the Japanese Imperial Forces against the "comfort women" as crimes against humanity. IFOR also believes that these actions violate the prohibition against slavery and the slave trade under international customary law, practices established as crimes well before the actions in question took place.

4. Under these two categories, the actions of the Japanese Imperial Forces are punishable under international law with no statute of limitations. As a matter of natural justice, Japan is required to take the necessary measures to punish those who were responsible for the crimes mentioned above.

Multilateral treaties

5. The Convention concerning Forced or Compulsory Labour (No. 29) adopted by the International Labour Organisation in 1930 was ratified by Japan in 1932. The first sentence of article II totally prohibits any forced labour of women. The Japanese Government acknowledged that coercion was, in general, employed in recruitment and/or treatment of the "comfort women" victims. Article 25 stipulates that "The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced."

6. The International Convention for the Suppression of the White Slave Traffic adopted in 1910 by the International Conference held in Paris was acceded to by Japan in 1925. This convention is not applicable in colonies and territories unless a notice to do so was registered by a State party (art. II). However, it is applicable to the cases of the "comfort women" from Korea for the following reasons.

7. The planning of the "comfort women" system was conceived and supervised by the Supreme Headquarters of the Japanese Imperial Forces and the centre of the Japanese Government, whose seats were inside Japan, namely at Tokyo. Thus, orders, authorizations and permissions for various kinds of actions and omissions in relation to the "comfort women" were directed by the authorities from mainland Japan. In many cases, the "comfort women" were deported in

Japanese ships which are considered as Japanese territory. In all cases, recruitment, enslavement, deportation, treatment and supervision of the "comfort women" were committed by the personnel of the Japanese Imperial Forces and/or those who were instructed by them. These personnel were under the jurisdiction of the Japanese Empire.

8. Article 1 of the Convention explicitly provides that those who solicited, drew into or abducted a juvenile woman (younger than 21 years old) for the purpose of prostitution (even if they obtained consent from the woman) should be punished. Article 2 also explicitly provides that those who solicited, drew into or abducted an adult woman using deception or means of violence, coercion, abuse of authority or any other kind of coercive measures should be punished. Furthermore, article 3 provides the obligations of the States parties to take necessary measures in order to ensure punishment of the perpetrators of the crimes defined by articles 1 and 2, including relevant legislation.

9. Many "comfort women" were juveniles when they were taken. Japan acknowledged that almost all of the "comfort women" were taken by deception or by coercive measures. Thus these obligations for punishment still bind the current Government.

Time limitations

10. The actions against the "comfort women" were punishable even by the domestic law at the time of the Japanese empire. The problem is that Japan may argue that it is not possible for the Japanese authorities to prosecute any perpetrator by applying the penal law of the time because of the statutes of limitation under the Criminal Procedure Act of the time. However, there is no statutes of limitation as regards the obligations of Japan under international law.

11. The Japanese legislature may raise the legal issues under articles 31 and 39 of the Japanese Constitution which guarantee due process of law and the prohibition of retrospective penal legislation. However, article 15 (1) of the International Covenant on Civil and Political Rights, to which Japan has been a party since 1979, prohibits retrospective penal law in general but allows conviction of any act or omission which constituted a criminal offence under international law. Furthermore, article 15 (2) allows "the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations". (See M. Novak, "UN Covenant on Civil and Political Rights - CCPR Commentary", N.P. Engel, p. 281).

De facto impunity

12. Despite its obligations under international law, Japan has failed to punish even a single perpetrator of the crimes committed against the "comfort women", who are estimated to number about 200,000. This non-punishment should be condemned as one of the worst examples of de facto impunity in world history.

Discrimination against Asian women

13. The punishment by the war crimes tribunals of the Allied Forces was accepted by Japan. (Art. II of the San Francisco Peace Treaty of 1951). The punishment, including one death sentence, of 10 personnel of the Japanese Imperial Forces who had enslaved 35 Dutch "comfort women" victims in Indonesia, was carried out by the Dutch Military Tribunal in 1948. Thus Japan admitted the principles that actions against the "comfort women" constituted serious offences, which deserved a death penalty when the "comfort women" were white women. In contrast, Japan has never acknowledged that the very same crimes when against Asian, mainly Korean, "comfort women" constituted an offence. This attitude should be condemned as shameless contempt of and discrimination against Asian women.

Compensation on the ground of non-punishment

14. The final report submitted by the Special Rapporteur of the Sub-Commission on compensation and rehabilitation for victims of gross violations of human rights, Professor Theo van Boven (E/CN.4/Sub.2/1993/8), is based on traditional international law as regards State responsibility. In paragraph 137 of the report, article 2 of the proposed General Principles implies that a State is bound by the obligation to compensate if the State breaches the obligation to punish. Professor Ian Brownlie of Oxford University, in his Principles of Public International Law (Oxford: Clarendon Press, 1990, pp. 464-465), also supports this view by citing the Janes case in the 1920s.

15. However, the Japanese Government representative refused to admit any legal obligation to compensate the "comfort women" of South Korea saying that "the claims issues between Japan and the Republic of Korea have been resolved by an agreement, signed on 27 June 1965 on the settlement of the problems concerning property and claims, and on the economic cooperation between Japan and the Republic of Korea". The obligations, however, for fact-finding and punishment were not at all resolved by the said agreement, as the terms of the agreement limit the scope within "the issues as regards properties, rights and interests ..." (art. 2 of the agreement). Therefore, Japan cannot argue that the obligation for compensation on the grounds of non-punishment was resolved by the agreement, as the obligation for punishment has no time limitation and can never be blocked by the agreement).

16. Many experienced lawyers in Japan predict that victims must spend from 10 to 20 years to exhaust the civil law procedures leading to a judgement of the Supreme Court. Considering that the age of the youngest of the "comfort women" is now 63, the Japanese Government is invited to accept the demand for an expeditious arbitration.

17. IFOR wishes to point out the existence of the Permanent Court of Arbitration which can offer its services in cases where one party is not a State.

18. IFOR wishes to recommend to the Japanese Government immediately to take the necessary steps to abide by the obligations under international law:

(a) To face faithfully the demands being made by the organizations representing the "comfort women" victims and to take necessary steps to respond to the demands in accordance with obligations under international law;

(b) To investigate all cases of impunity as regards the alleged "comfort women" cases and to make public all information obtained, unless the victims wish otherwise;

(c) To take all measures, including necessary legislation, investigation, prosecution, trials and punishment in order to fulfil the obligations under international law for punishment of the perpetrators of the crimes committed against the "comfort women" victims;

(d) To pay adequate compensation to all of the "comfort women" victims on the grounds of the past non-punishment;

(e) To accept the demand to settle the dispute between the "comfort women" victims and Japan before any arbitration body, such as the Permanent Court of Arbitration, if this demand is made by any of the victims.